Computer Associates International, Inc., and Cushman & Wakefield of Long Island, Inc. *and* Local 30, International Union of Operating Engineers, AFL–CIO. Case 29–CA–17315

August 19, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

On March 6, 1996, Administrative Law Judge Howard Edelman issued the attached decision. The Respondent, Computer Associates International, Inc., and the General Counsel each filed exceptions and supporting briefs as well as briefs in answer to the others' exceptions, and the Respondent, Cushman & Wakefield of Long Island, Inc., filed a brief in answer to both the General Counsel's and Respondent Computer Associates' exceptions.

The National Labor Relations Board has considered the decision in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions only to the extent consistent with this Decision and Order.

Based on credited evidence, the judge found that Respondent Computer Associates International, Inc. (Computer) violated Section 8(a)(1) of the Act through various interrogations, promises, threats, and warnings related to the union membership and/or activities of union-represented operating engineers working at its facility. We adopt these findings for the reasons stated by the judge.[2] The judge also found, based on his interpretation of the theory set out in *Esmark, Inc.*,[3] that Respondent Computer violated Section 8(a)(3) and (1) by causing the discharge of nine union-represented operating engineers. We do not agree with the judge's application of *Esmark* to this case, and we reverse his finding of violation made on that basis and remand the proceeding to the judge for further action as explained below.[4]

During 1991, Respondent Computer, a software manufacturer, built a facility in Islandia, New York. In September 1991, Computer entered into a subcontract with Respondent Cushman & Wakefield (Cushman), a real estate management company, whereby Cushman agreed to supply Computer with building engineers to perform certain startup and maintenance duties at the Islandia site. The contract was for an initial period of 18 months; it was renewable month to month thereafter, and terminable on 30 days' written notice. Cushman obtained engineers represented by Local 30, International Union of Operating Engineers, AFL–CIO (the Union) to staff Computer's facility. The engineers were apparently the only Islandia-based employees represented by a union. On March 31, 1993, 5 days after the Union lost a representation election among Computer's facilities department employees[5] and, without prior notice, Respondent Computer terminated the contract with Cushman, resulting in the engineers' immediate discharge from employment. Respondent Computer thereupon directly hired a replacement complement of engineers, none of whom belonged to the Union.

The General Counsel alleged, inter alia, that by terminating the engineers' employment, Respondents Computer and Cushman both violated Section 8(a)(3). The General Counsel presented evidence assertedly showing that Computer, together with Cushman, hired the engineers and codetermined essential terms and conditions of employment, thereby establishing a joint-employer relationship warranting their mutual liability for the unlawful termination.

Following the close of the hearing, the General Counsel proffered an alternative basis for finding a violation. Citing settled Board principles that had recently been reiterated in *Esmark*, supra, the General Counsel urged that an employer should be held responsible for the unlawful termination of another employer's employees where it can be shown that such employer ''directs, instructs, or orders another employer with whom it has business dealings to discharge, layoff . . . or otherwise affect the working conditions of the

[1] The Respondent, Computer Associates, has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] *Fabric Services*, 190 NLRB 540, 541–542 (1971). These findings are not affected by our remand of the joint-employer issue.

[3] 315 NLRB 763 (1994).

[4] No exceptions were filed to the judge's dismissal of allegations of violation of Sec. 8(a)(5) against Respondent Computer nor to his dismissal of all allegations against Respondent Cushman & Wakefield of Long Island. In adopting the dismissal of 8(a)(3) allegations against Respondent Cushman & Wakefield, we note particularly the judge's unchallenged findings, set forth in the fifth paragraph of his ''Analysis and Conclusions,'' that the ''evidence establishes that Computer effected the termination of its subcontract with Cushman entirely on its own''; that ''Cushman was not involved in any way concerning the 8(a)(1) statements alleged or the decision to terminate the management agreement which resulted in the termination of the Cushman engineers''; and that ''Cushman was an innocent party.'' In these circumstances, we find that Respondent Cushman & Wakefield is not liable for actions in violation of Sec. 8(a)(3) which may ultimately be found to have been committed by Respondent Computer in the event that Respondent Computer is found to be a joint employer of the operating engineers provided by Respondent Cushman & Wakefield. (See discussion, infra.) *Capitol EMI Music*, 311 NLRB 997 (1993).

[5] The unit was described as consisting of Computer's utility and lead utility persons. The tally of ballots was nine votes against representation and no votes for representation.

latter's employees''[6] because of their union activities. The General Counsel argued that inasmuch as it was Respondent Computer's discriminatorily motivated termination of the engineering services agreement with Cushman that really caused the engineers' loss of employment, it would be appropriate, under *Esmark*, to hold Computer alone liable under the Act, irrespective of its joint-employer status.

The judge agreed with the General Counsel's alternative theory and concluded that Respondent Computer alone violated Section 8(a)(3).[7] He found that the evidence established that Respondent Computer knew about the engineers' union affiliation and activity, had demonstrated union animus (by virtue of the 8(a)(1) conduct described above), cancelled the contract for their services immediately following the Union's attempt to organize its facilities department employees, and replaced the terminated engineers with nonunion engineers. He found no merit in Respondent Computer's asserted business and economic reasons for ending the contract, noting that these ostensible concerns had not been brought to Cushman's attention during the parties' discussions for a successor agreement. The judge found no nondiscriminatory basis for its action and determined that Respondent Computer terminated the engineering services contract with Cushman in order to remove completely the Union's presence from Islandia and thereby prevent future organizational activities from taking place. Relying on *Esmark*, supra; *Dews Construction Corp.*;[8] and *Georgia-Pacific Corp.*,[9] where, in each case, an employer was held liable under Section 8(a)(3) for taking actions to cause another employer to discriminate against its employees, he reasoned that an even more compelling situation exists where an employer's discriminatorily motivated termination of a contract disrupts the employment of another employer's employees. Inasmuch as cancellation of its contract with Cushman was sufficient to cause the engineers to lose their jobs, it was unnecessary for Computer to pressure Cushman to discharge them. The judge reasoned that, by taking action on its own which inevitably resulted in ending the engineers' employment, Respondent Computer went beyond merely pressuring another employer to act, as occurred in the above-cited cases. The judge concluded that in these circumstances liability under the Act is established irrespective of joint-employer status. Thus, he found it unnecessary to resolve the joint-employer issue and held Respondent Computer solely liable for the violation of the Act.

We disagree with the judge's analysis and find that he erroneously extended the principles of *Esmark*, *Dews*, and *Georgia-Pacific* to this case. Instead, we find this case governed by the long-settled principles set forth in *Plumbers Local 447 (Malbaff Landscape Construction)*,[10] which holds that ''an employer does not violate Section 8(a)(3) by ceasing to do business with another employer because of the union or nonunion activity of the latter's employees.'' The Board's construction of Section 8(a)(3) in *Malbaff* was the premise for its holding in that case that a union which picketed a reserve gate used by subcontractor Malbaff's nonunion employees did not violate Section 8(b)(2) and (1)(A) of the Act, even though the general contractor, Hart, terminated the subcontract with Malbaff in response to the picketing, and therefore caused Malbaff's employees to lose employment on the project because of their nonunion status. Section 8(b)(2) makes it an unfair labor practice for a union to ''cause or attempt to cause an employer to discriminate against an employee in violation of'' Section 8(a)(3). Hence, if Hart did not violate Section 8(a)(3) by terminating the contract with Malbaff, the Board reasoned, then the union did not violate Section 8(b)(2) and (1)(A) by its picketing. As the Board further explained, finding a violation of Section 8(a)(3) on the basis of an employer's decision to substitute one independent contractor for another because of the union or nonunion status of the latter's employees is inconsistent with both the language of Section 8(a)(3)—which prohibits discrimination against employees, not discrimination against other employers—and with legislative policies underlying Section 8(b) of the Act aimed at protecting the autonomy of employers in their selection of independent contractors with whom to do business.[11] In short, an employer does not *unlawfully encourage* union membership by substituting a contractor with unionized employees for a nonunion contractor, nor does it *unlawfully discourage* union membership by the reverse action, regardless of whether the union status of the subcontractors' employees motivates the contracting decisions.

In the present case, like *Malbaff* and unlike the cases relied on by the judge, all that the judge's ex-

[6] *Esmark* supra at 768, quoting *Dews Construction Corp.*, 231 NLRB 182 fn. 4 (1977).

[7] Because the General Counsel litigated the case exclusively on the joint-employer theory and did not raise the alternative basis for finding a violation until after the hearing's close, Respondent Computer contends that its due-process rights have been infringed. We note that the General Counsel sought and was granted permission by the judge to argue its alternative theory and, following the Board's denial of Respondent Computer's special appeal of the judge's ruling, the hearing was reopened to permit the parties to adduce whatever additional evidence they deemed necessary. Thus, we find no merit in Respondent Computer's claim of prejudice.

[8] Supra.

[9] 221 NLRB 982 (1975).

[10] 172 NLRB 128, 129 (1968).

[11] Id. at 129. Although 8(b)(4) charges for secondary conduct had been brought and settled regarding union threats against Hart prior to the reserve gate picketing, there were no allegations of unlawful secondary conduct in the case that was before the Board. Id. at 128 fn. 3, 134.

press findings establish are that Computer terminated the contract with Cushman because it did not want a contractor with unionized employees. The judge made no findings of an employer-employee relationship between Respondent Computer and the employees furnished by Cushman nor findings that Respondent Computer sought to pressure, direct, instruct, order, or persuade Respondent Cushman to terminate or replace the union-represented employees with nonunion employees. The judge simply relied on Respondent Computer's exercise of its option to terminate the contract with Cushman, with the result that the Cushman-furnished employees lost their employment at Respondent Computer's Islandia facility. Accordingly, the judge's findings provide no basis for concluding that Respondent Computer violated Section 8(a)(3) and (1) as alleged.

As noted above, the cases relied on by the judge do not call for a contrary result. In each of those cases an employer involved itself directly in the employment decision at issue by directing, instructing, or ordering another employer to take an unlawfully motivated action against its employees.

In *Esmark*, the issue was a parent company's liability for the unfair labor practices of its wholly owned subsidiary. The Board found that Esmark, through its ''vigorous and detailed exercise of its right of ownership'' played a ''key causal role''[12] in the unlawful transactions involved in the sham closing and reopening of a subsidiary's operation, which resulted in the discriminatory elimination of a union agreement previously covering the subsidiary's employees. The Board concluded that when it is shown that a parent company has mandated actions taken by its subsidiary against its employees, the parent may not escape liability under Section 8(a)(3) of the Act.

Similarly, in *Dews Construction*, a general contractor told a subcontractor that it had to discharge one of two employees employed by the subcontractor because of their union activities. By following the general contractor's order, both the subcontractor and the general contractor were found liable for the unlawful discriminatory conduct.

In the third case cited by the judge, the company in *Georgia-Pacific* instructed a subcontractor not to employ certain individuals to perform subcontracted work because those individuals had engaged in a strike at another of the company's worksites. Because the consequent loss of employment opportunities for those individuals was directly attributable to the company making the demand, the Board held that company jointly liable with the subcontractor under Section 8(a)(3).

Although we are reversing the judge's finding that Respondent Computer violated Section 8(a)(3) as alleged, that does not resolve this case. If, as the General Counsel contends, Respondent Computer was a joint employer with Cushman of the Cushman-furnished employees, then liability under Section 8(a)(3) may be established.[13] The judge's analysis made it unnecessary for him to reach the joint-employer issue. Because certain evidence germane to this matter involves issues of credibility, we will remand this proceeding to the judge for further action consistent with this decision.

[12] *Esmark*, supra at 767.

ORDER

The proceeding is remanded to Administrative Law Judge Howard Edelman for the purpose of determining the joint-employer status of Respondent Computer Associates International, Inc. relative to the operating engineers who worked at its Islandia, New York facility pursuant to its contract with Respondent Cushman & Wakefield of Long Island, Inc., and attendant liability under Section 8(a)(3) and (1) of the Act.

Thereafter, pursuant to the applicable provisions of Section 102.45(a) of the Board's Rules and Regulations, the judge shall prepare and issue a supplemental decision continuing findings of fact, conclusions of law, and a recommended supplemental Order in regard to the issue remanded herein. Following service of such supplemental decision and Order on the parties, the provisions of Section 102.46 of the Board's Rules and Regulations shall be applicable.

The issuance by the Board of an order remedying the unfair labor practices found in this proceeding is held in abeyance pending completion of the action encompassed by this remand.

[13] *Whitewood Maintenance Co.*, 292 NLRB 1159, 1164–1166 and fn. 24 (1989), enfd. sub nom. *Texas World Service v. NLRB*, 928 F.2d 1426 (5th Cir. 1991).

Jonathan Leiner, Esq., for the General Counsel.
David Bennett Ross, Esq. and *Lisa E. Barse, Esq. (Seyfarth, Shaw, Fairweather & Geraldson)*, for Respondent/Employer Computer Associates International.
Steven Harz, Esq. (Robinson, St. John & Wayne), for Respondent/Employer Cushman & Wakefield.
Ralph Somma, Esq. and *Adam Ira Klein, Esq.*, for the Union.

DECISION

STATEMENT OF THE CASE

HOWARD EDELMAN, Administrative Law Judge. This case was tried on various dates from May 24, 1994, through January 13, 1995, in Brooklyn and New York, New York.

Pursuant to a charge filed by Local 30, International Union of Operating Engineers, AFL–CIO (the Union) the Regional Director for Region 29 issued a complaint dated June 30, 1993, against Computer Associates International, Inc. and Cushman & Wakefield of Long Island, Inc. (called collectively, the Respondent and separately, Respondent Computer and Respondent Cushman) alleging that the Respondent had

violated Section 8(a)(1), (3), and (5) of the Act. During the course of trial, the General Counsel amended the complaint to add additional allegations of Section 8(a)(1). Respondents Computer and Cushman filed briefs and a reply brief. The General Counsel filed a reply brief to issues raised by the Respondent's reply brief.

On the entire record, including my careful observation of the demeanor of the witnesses and a consideration of all briefs filed, I make the following

FINDINGS OF FACT

Respondent Computer is a Delaware corporation with its principal office and place of business located at Islandia, in Suffolk County, New York, where it is engaged in the design, development, and marketing of computer software. Respondent Computer, in the normal course of business annually derives revenues in excess of $500,000 and annually purchases and receives at its Islandia facility goods, products, and materials directly from States other then the State of New York, valued at in excess of $50,000. It is admitted, and I conclude that Respondent Computer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Respondent Cushman is a New York corporation with its principal office and place of business located at Uniondale, in Nassau County, New York, where it is engaged in the providing of maintenance services for various corporations, including the operation of mechanical, heating, electrical, and ventilation equipment. Respondent Cushman annually provides the services, described above, valued in excess of $50,000 directly to employers located in the State of New York, which employers sold and shipped goods, products, and other materials valued in excess of $50,000 directly to enterprises located outside the State of New York. Respondent Cushman admits, and I conclude that Respondent Cushman is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

It is admitted, and I conclude that the Union is a labor organization within the meaning of Section 2(5) of the Act.

Counsel for the General Counsel alleges that Respondent Computer and Respondent Cushman are joint employers in that Respondent Computer has possessed and exercised control over the labor relations policy of Respondent Cushman, and administered a common labor policy with Respondent Cushman for the employees of Respondent Cushman. I make no finding as to whether such joint-employer relationship existed because I find that this case can be conclusively decided based on the General Counsel's alternative theory, articulated in the Board's *Esmark* case, 315 NLRB 763 (1994). Moreover, in view of my finding, described in detail below, that the Union did not engage in any collective-bargaining negotiations with Respondent Computer as contended by counsel for the General Counsel, and that the Union filed a petition for election alleging Cushman and Computer as joint employers, but entered into a stipulated election with Cushman as a single employer which, following an election resulted in a certification for the Union as collective-bargaining representative for the unit of operating engineers in issue, I believe the General Counsel's contention that such joint-employer relationship exists is questionable. However, I repeat, I make no finding with respect to the alleged joint-employer relationship.

Respondent Computer is the second largest computer software Company in the world. As set forth above, Computer develops, manufactures, markets, and sells computer software.

Respondent Cushman is a real estate corporation engaged in all phases of real estate, including the development and maintenance of heating and air conditioning. Cushman manages hundreds of buildings in the New York area and employs thousands of employees, including many employees classified as operating engineers. Cushman's operating engineers have been represented by the Union for many years prior to any dealings with Computer. Cushman has separate collective-bargaining agreements with the Union for the EAB building and three other employers whose buildings it maintains. There is no evidence that the Union was ever a party to a joint collective-bargaining agreement with Cushman and the employer who subcontracted with Cushman.

Computer and Cushman are not in any way connected corporations. They do not engage in the same business, have common financial interests, ownership, or management. The wages, hours, and other conditions of Cushman's operating engineers are determined by the terms of their collective-bargaining agreements with the Union. Computer's employees numbering close to 2000 are not represented by any labor organization. The wages, hours, and other terms and conditions of all the Computer employees are solely determined by Computer.

In 1991, Computer was in the process of completing the construction of the Islandia facility. There were no employees of Computer working at this facility. In September 1991, as the Islandia facility was nearing completion Computer entered into a subcontract with Cushman for a period of 18 months, and thereafter on a month-to-month basis ''until terminated by either party on thirty (30) days' prior written notice.''

After the agreement between Computer and Cushman was executed, Cushman staffed the Computer's Islandia facility with operating engineers represented by the Union at other employer sites to handle the startup and engineering maintenance of Computer. Cushman also filled in the required complement of engineering employees necessary to handle its contract with Computer by hiring employees represented by the Union from the Union's hiring hall. This was consistent with the provisions of its collective-bargaining agreements with the Union at other locations. Even before its operations at the Islandia facility were fully staffed, Cushman began collective-bargaining negotiations with the Union for a collective-bargaining agreement covering the operating engineers working at the Computer, or Islandia facility, which were similar to collective-bargaining agreements Cushman had with the Union at the EAB building and three or so other employer sites where it performed similar engineering work.

The Union, aware that the subcontract between Cushman and Computer was for a short period, 18 months, and thereafter on a month-to-month basis, attempted to create a collective-bargaining relationship with Computer covering the engineering employees presently employed by Cushman, but working at Computer's Islandia facility. As set forth above, there is no evidence that the Union had similar joint collective-bargaining agreements with Cushman and the employers

with whom it had subcontracts similar to the subcontract between Cushman and Computer.

In support of the General Counsel's contention that a joint collective-bargaining relationship existed between Computer and Cushman, the General Counsel called as a witness the Union's business representative, Jack Ahern. Ahern incredibly testified that on or about September 1991, he commenced separate collective-bargaining negotiations for a joint-employer contract with Computer Manager Edward Benz on the telephone, and Cushman Manager John Bzezinski in person. Ahern testified that these negotiations took place with Benz during the remaining 3 months of 1991, and with Bzezinski from September 1991 through the early part of 1993. Ahern testified that during the September through December 1991 period, he had about 8 to 10 telephone conversations with Benz and about 20 to 25 separate conversations with Bzezinski. Ahern admitted that he had no joint negotiations for such joint collective-bargaining agreement.

Ahern initially testified that during his first conversation with Benz, Benz in substance agreed to recognize the Union as the joint collective-bargaining representative and further agreed to adopt the terms and conditions set forth in the above-described EAB agreement. When questioned if this was so, why did he not draw up a contract with the EAB provisions, send it to Benz and ask him to sign it, Ahern appearing to be caught off guard, unbelievably, and incredibly replied: ''In retrospect, that is probably what I should have done.'' When questioned further as to why it was necessary to have separate discussions with Benz and Bzezinski, Ahern again appearing to be caught off guard, testified lamely: ''I was going to let sleeping dogs lie.'' Although pressed by further questions on this issue, Ahern never gave a coherent answer.[1]

Benz credibly denied that they ever had any collective-bargaining negotiations with Ahern, telephonic, or otherwise. Moreover, Benz further credibly testified that collective-bargaining negotiations were not within his job responsibilities.

Based on my impression of Aherns overall demeanor and his testimony, described above, I conclude that Ahern's testimony as to the central issue of recognition and bargaining with Computer as a joint employer, is implausible, incoherent, contradictory, and entirely incredible. Moreover, I believe such testimony was intentionally fabricated.

There is no doubt in my mind that the Union was trying to ensure representation of the nine operating engineers eventually hired by Cushman to perform the engineering work at the Islandia facility, when the subcontract between Computer and Cushman would be eventually terminated. It was a short-term contract of only 18 months, month to month thereafter. The Union tried to do this by insisting in its initial contract negotiations with Cushman, in 1991, that there must be an assignment clause in the collective-bargaining agreement between Cushman and the Union, which would assign that agreement to Computer when the Cushman subcontract was eventually terminated. Of course, Computer would have to agree to this. Early on in the collective-bargaining negotiations between Cushman and the Union, Bzezinski showed a copy of the EAB contract that Cushman and the Union were using as a model with an assignment clause included, to Don Hoffman, computer manager whose job responsibilities included such negotiations. Hoffman eventually got back to Bzezinski and informed him that Computer would not agree to such assignment clause. Throughout the negotiations between the Union and Cushman, the Union tried to push Bzezinski to get Computer to agree to such assignment clause, but Computer would not do so. At one point during these negotiations, Bzezinski credibly testified that he told Ahern that he was unable to get Computer to agree to the assignment clause, and that this was the only issue that was preventing agreement on a collective-bargaining agreement between Cushman and the Union. Ahern replied that ''I feel strongly that we need that there.'' Accordingly, a policy collective-bargaining-agreement was never executed between Cushman and the Union because of the Union's insistence on a nonmandatory subject of bargaining.

Ahern incredibly denied that the assignment clause was an issue. I conclude that the inclusion of such clause would be of major concern to the Union, because absent obtaining a joint collective-bargaining agreement with Cushman and Computer, such clause would be the only way to ensure the Union of continued representation of these operating engineers when the subcontract with Cushman was ultimately terminated by Computer. This conclusion is consistent with the testimony of both Bzezinski and Hoffman.

Failing in its efforts to obtain a collective-bargaining agreement with Cushman containin an assignment clause, the Union filed a representation petition on May 11, 1992, alleging Cushman and Computer as joint employers in connection with the operating engineers then working at the Islandia facility. The Union ultimately executed a stipulated election agreement solely with Cushman. Computer was eliminated as a joint employer. The election was conducted on June 11, 1992, and the Union certified on July 1, 1992.

A short time before January 14, 1993, the Union commenced the organization of a unit of certain full- and part-time employees directly employed by Computer and working at the Islandia facility. On January 14, the Union filed a representation petition covering a unit of these employees.

Following the filing of the above petition, Computer Supervisor Benz met Cushman operating engineers Post and Stackpole outside his office. Stackpole and Post credibly testified that Benz stated ''That's it, [y]ou guys are finished.'' He stated that they ''had blown it.'' Benz entered his office. Stackpole and Post followed. Both employees asked Benz what he was talking about. Benz replied that he had received a petition from the National Labor Relations Board stating that the Computer employees wanted to be represented by the Union. He then asked both employees if they knew who was responsible for this petition. Stackpole stated that he was unaware of such petition. Benz replied, ''Well if your Union did it, it was foolish of them to do so because you'll be thrown out of here, and the facility workers [the Computer employees set forth in the Union's petition] will lose their jobs too.''

Benz then told them that Charles Wang, a Computer corporate officer, was very upset about the filing of this petition. Benz went on to explain that Wang was worried that other Computer employees might try to unionize. Post asked Benz why his job was in jeopardy. Benz replied that Wang viewed him and the Union as one in the same problem.

[1] See pp. 109–116 of the trial transcript.

Benz appeared to me to be less than forthright when questioned on direct examination by Computer's counsel. He couldn't deny that he had had a conversation with Stackpole and Post about the Union's petition, but appeared to me to be tailoring his testimony so as to avoid admitting any clear violation of Section 8(a)(1) of the Act. Although being questioned by Computer's counsel, and presumably prepared to testify, he appeared nervous, evasive, and not forthcoming concerning this conversation and the conversations set forth immediately below. I do not credit Benz' testimony as to the above conversation, or his denials as to the subsequent conversations set forth below.

Benz incredibly denied the statements attributed to him by Post and Stackpole.

I found Post and Stackpole to be credible witnesses in connection with their testimony as to this conversation and Post with respect to a second conversation described below. Their testimony appeared to me to be forthright, both on direct and cross-examination. They corroborated each other. I conclude that their testimony was not fabricated. It had a strong ring of truth. Accordingly, I credit their testimony.

Cushman's employee Jim Mills credibly testified that on or about March 23, a few days before the election was conducted in connection with the above petition, he had a conversation with Benz in his office about the Union. Mills credibly testified that during a routine work-related conversation Benz stated, ''Boy, your Union really fucked up big time now.'' Benz then stated that when Computer received the petition Wang had his lawyers investigate the Union and he said the investigation showed that the Union was nothing but ''a bunch of fucking crooks.''

Mills stated that his whole family were union workers for many years, and had done well by the Union. Benz replied that if the engineers would become employed directly by Computer, they would generally be better off, and specifically would receive schooling, computer training, and other unspecified benefits.

Mills then asked Benz why Computer was so antiunion. Benz replied that ''Charles (Wang) wasn't about to let anybody come into his building and tell him what he was going to pay his employees.'' Benz then stated that the Company feared that if the Union represented any Computer employees, they might try to organize other parts of the Company. He then stated that sometime, years ago a union had organized the computer room at Grumman, and that it had taken 10 years to get the union out of their shop.

I conclude that Mills was a credible witness. I was impressed with his overall demeanor. He answered all questions put to him on direct and cross-examination candidly. His testimony was very detailed, and not the type of testimony that an employee could easily fabricate. His testimony had the ring of truth.

Benz denied such conversation took place. He testified that following his initial conversation with Stackpole and Post, Computer's attorney told him not to talk to the employees about the Union anymore. For the reasons set forth above, I do not credit Benz' denial.

On or about March 26, 1993, Post and John McKenna, one of the nine operating engineers employed by Cushman, spoke with Benz. Post and McKenna credibly testified that Benz told them that the Union had lost the NLRB election covering the unit of the Computer employees and that Wang was very happy about this. He then stated that there was no way that Wang would sign a contract with the Union.

I conclude that McKenna was a credible witness. I was generally impressed with his overall demeanor. He displayed a good recollection of the facts and was a very forthright witness. Moreover he corroborated Post who I have already concluded was a credible witness.

Benz denied this conversation. For the reasons set forth above, I do not credit Benz' denial.

Union Representative Ahern testified that on or about January 20, 1993, he met with Bzezinski and Bill Toohey, a managerial official of Cushman, at a long Island restaurant and during their dinner Bzezinski stated that Wang was ''bouncing off the walls'' concerning the Union's attempt to organize a unit of Computer employees and that he was concerned that the Union would attempt to organize other units in his building. Bzezinski and Toohey denied such statement. As set forth above, I have concluded that Ahern fabricated significant portions of his testimony and was a totally incredible witness. Accordingly, I do not credit any of his testimony. For the reasons stated above, I conclude Ahern's entire testimony is not credible.

Sometime in late January 1993, Bzezinski and Toohey met with Pozanski and Steve Woegun, Computer's legal counsel. One of the issues that was discussed was the recent NLRB petition that had been filed concerning the Computer employees. Pozanski expressed concern about the Union's organization of its employees and wanted to know whether this was the Unions usual procedure. Bzezinski told him that the Union had a right to engage in such organization.

Sometime on March 31, 5 days after the Computer NLRB election, Computer Vice President Abraham Pozanski handed Cushman's manager, Bzezinski, a letter stating that the agreement between Cushman and Computer, described above, was terminated immediately. No reason for the termination of Cushman's services was stated in the letter. Cushman had no prior notice of any kind to indicate that such termination was imminent. Such termination was effected notwithstanding the clear language of their agreement which required 30 days' notice. The parties to the above agreement were at this time operating on a month-to-month basis. Computer had not in any way indicated at any time that it was dissatisfied with the service performed by the Cushman employees. When the employees reported for work on April 2, 1993, Benz told Post to call the employees together.

Post assembled all the operating engineers present and employed by Cushman outside Benz' office. Benz had called for several security guards to be present. Benz told the Cushman employees that the Cushman agreement had been terminated, that they were no longer working at this facility, and asked them to turn in their badges and keys. They did so. The security guards then escorted the employees to their lockers, to the lobby, and out of the building.

After Bzezinski received the notice of termination he contacted Ahern by telephone to inform him. He told Ahern that the reason for the termination was his insistence on the assignment clause which Computer refused to sign. Ahern testified that Bzezinski told him the reason for the termination of their service contract was because the Union had filed a petition for Computer's employees.

Computer hired nine individuals to replace the Cushman operating engineers at Computer's Islandia facility. Two of these employees were hired shortly before the termination of the Cushman engineers. The remaining seven employees were hired between April and September 1993. None of the nine Cushman employees were offered a position of employment by Computer.

Analysis and Conclusions

The undisputed evidence conclusively establishes that Computer, by terminating its subcontract with Cushman effectuated the termination of the Union's operating engineers employed by Cushman and working at the Islandia facility. Clearly, if such subcontract was terminated for economic reasons there would be no violation of Section 8(a)(1) and (3) of the Act. The issue presented in this case is whether, if such termination of the above subcontract was motivated because of the Union's activity in connection with trying to force Computer to accept the Union's assignment, and the Union's subsequent organization of Computer employees, does such motivation establish a violation of Section 8(a)(1) and (3).

Established Board law holds that an employer violates the Act when it causes the discharge of another employer's employees because of their union activities. See *Esmark, Inc.*, 315 NLRB 763, 765–770 (1994); *Dews Construction Corp.*, 231 NLRB 182 (1977); and *Georgia-Pacific Corp.*, 221 NLRB 982 (1975). The Board in *Esmark*, supra at 768 states:

> The frequency with which employers depend on the good will of other employers for survival necessitates imposing liability under Section 8(a)(3) on third party employers under certain circumstances. A contrary practice of limiting liability to the immediate employer when another has caused it to discriminate against its employees would place limitations on employee freedom from discrimination under Section 8(a)(3). The Board has found that the statutory purpose of protecting employees from discrimination is served by holding liable a general contractor for knowingly using economic power to cause other employers to discriminate.

The Board further holds specifically that the imposition of such liability does not require a prerequisite finding that the general contractor and the subcontractor be a single or joint employer.

Computer's counsel contends that the *Esmark* theory is not applicable to the instant case because Computer did not direct Cushman to discriminate against its employees, as in the above-cited cases. I find such contention entirely without merit. Computer went one step further then direction. It terminated its agreement with Cushman, which directly resulted in the termination of the Cushman employees. Computer, as in *Esmark*, also enjoyed the power to bring about the termination of the Cushman employees and the need for union representatives to visit the Islandia facility where they could engage in further organizing activities of Computer's employees. Computer's termination of the subcontract agreement with Cushman exceeded that conduct described in *Dews* and *Georgia-Pacific*. In those cases the contracting employer merely directed the discriminatory discharges, or refusals to hire, from the subcontracting employer. In the instant case, Computer acted more directly. Computer actually performed the unlawful discharges by its sudden termination of the management agreement between Computer and Cushman. No action remained for Cushman to perform.

The undisputed evidence establishes that Computer effected the termination of its subcontract with Cushman entirely on its own. (This is discussed in further detail below.) The *Esmark* theory of liability squarely places the blame entirely on the entity responsible for the discriminatory conduct. In the instant case it was Computer alone that decided to terminate the management agreement, allegedly for economic reasons. There was no prior discussion with Cushman. The notice of termination took Cushman entirely by surprise. In a January 1993 meeting between Computer and Cushman representatives, Cushman was looking for a long-term agreement to succeed the present agreement which was then running month to month, and the Computer representatives did or said nothing to indicate that they were contemplating any changes. Cushman was not involved in any way concerning the 8(a)(1) statements alleged or the decision to terminate the management agreement which resulted in the termination of the Cushman engineers working at the Islandia facility. Computer was the party entirely responsible for these actions. Cushman was an innocent party. This is an additional reason why the *Esmark* theory is appropriate rather then the joint-employer theory. It would be unjust to require Cushman to accept joint responsibility for Computer's unlawful actions.

The credited evidence establishes that in January 1993, shortly after Computer received the representation petition concerning Computer's employees, Benz told Stackpole and Post, ''That's it you guys are finished,'' or that they had ''blown it.'' Benz further told these employees that ''[Y]ou'll be thrown out of here and the facilities workers will lose their jobs too.'' I conclude that these statements constitute threats that Computer would terminate their contract with Cushman which would result in their termination, in violation of Section 8(a)(1) of the Act. See *Hall Industries*, 293 NLRB 785, 790 (1989), and *Honeycomb Plastics Corp.*, 288 NLRB 413, 418–419 (1988).

I also conclude that his questioning of them as to whether they knew who was responsible for the representation petition constitutes unlawful interrogation in violation of Section 8(a)(1). See *Sorensen Lighted Controls*, 286 NLRB 969, 976, 977 (1987), citing *Sunnyvale Medical Clinic*, 277 NLRB 1217 (1985), and *Columbian Rope Co.*, 299 NLRB 1198, 1201 (1991). In the instant case Benz expressed no valid purpose for such interrogation, gave no assurance against reprisals, and made unlawful threats to discharge the Cushman employees working at the Islandia facility.

The credited evidence also establishes that several days after the above unlawful interrogations and threats, Benz told Post that Computer Chairman Wang, and other upper management officials were very upset about the facilities' employees filing a petition to join the Union. I conclude such statement when taken in conjunction with Benz' unlawful threats several days earlier constitute an unlawful threat of unspecified reprisals, and a violation of Section 8(a)(1) of the Act. See *Gilston Electrical Contracting Corp.*, 304 NLRB 124, 127, 130 (1991), and *LWD, Inc.*, 309 NLRB 214, 217 (1992).

The credible evidence establishes that on or about March 23, 1993, Benz, in a conversation with Cushman employee

Mills, told Mills that if the engineers were to become employed by Computer directly, they would receive some unspecified schooling, computer training, and other unspecified job benefits. I conclude that such statement, especially when taken in conjunction with prior threats and clear expressions of union animus, constitute an unlawful promise of benefits. I find such promise to be a violation of Section 8(a)(1). See *Western Health Clinics*, 305 NLRB 400, 407 (1991); and *Franchet Metal Craft Inc.*, 262 NLRB 552, 553–554 (1982).

The credible evidence further establishes that during the same conversation, Benz told Mills that: ''Charles [Wang] wasn't about to let anybody come into his building and tell him what he was going to pay his employees.'' Benz further went on to state that if the Union was successful in organizing one department in the Computer organization, they might try to organize other departments. Then Benz, with real clarity, and by way of an example, explained that some years ago, a union had organized the computer room at Grumman and that it had taken 10 years to get rid of the union. These statements clearly conveyed the futility of selecting the Union as a collective-bargaining representative, and of engaging in further union activities. I find such statements to constitute a violation of Section 8(a)(1) of the Act. See *L. W. LeFort, Inc.*, 290 NLRB 344 (1988); and *Sivalls, Inc.*, 307 NLRB 986, 1001 (1992).

The credible evidence establishes that on March 26, the day following the Union's unsuccessful election, Benz told John McKenna and Post that Wang was happy with the results of the election, and that there was no way that Wang would ever sign a contract with the Union. I find such statement clearly conveys the futility of selecting the Union as a collective-bargaining representative, or engaging in further union activities. See *Ace Cab*, 301 NLRB 119, 125 (1992).

The General Counsel has alleged that Computer, or alternatively, Computer and Cushman, as joint employers, unlawfully discharged the nine operating engineers employed by Cushman and working at Computer's Islandia facility because of their membership in, or activities on behalf of the Union.

In determining whether an employer discriminates against his employees, the General Counsel has the burden of proving that the employees union activities were a motivating factor in the discrimination alleged. Once such factor is established, the burden shifts to the employer to establish that such action would have taken place notwithstanding such union activities. *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983); and *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

I conclude, pursuant to the *Esmark* theory discussed above, that if it is found that Computer terminated its agreement with Cushman because of Cushman's employees' membership in, or activities on behalf of the Union, that the subsequent discharge of Cushman's employees resulting from the termination of the parties' management agreement is a violation of Section 8(a)(1) and (3) of the Act. I further conclude that the *Wright Line* theory is applicable to this case. See *Esmark*, supra.

Computer's knowledge of union activities is clear and undisputed. The Union filed a petition with the NLRB on January 14 and Computer became aware of the Union's activity concerning its employees on the receipt of the petition.

The credible evidence establishes that immediately following the receipt of the Union's petition, Computer commenced a systematic antiunion campaign conducted by Benz. Benz is admittedly a high-ranking supervisor within the meaning of the Act, and in this capacity he had daily contact with the Cushman operating engineers. This antiunion campaign continued right up until March 26. It was 5 days later that Computer terminated its management agreement with Cushman. On March 25 the NLRB election took place and all of the Computer employees eligible to vote, voted for no Union.

The credible evidence establishes that Computer's antiunion campaign included unlawful interrogations, promises of benefit, and threats that the Cushman employees would ''be thrown out of here,'' and that ''[Y]ou guys are finished.'' I have concluded that such statements were unlawful threats to discharge union employees. I further conclude that such threats constitute admissions that Computer was going to terminate the Cushman agreement which would effectively result in the discharge of the Cushman employees then working at Computer's Islandia facility. Computer, by Benz also threatened the Cushman employees with unspecified reprisals, and unlawful statements that Computer would never recognize the Union and that union organization was futile, and constituted threats of unspecified action.

Thus I conclude that Computers' unlawful 8(a)(1) conduct establishes antiunion animus, and that the threats to discharge the Cushman employees constitute an admission that Computer intended to terminate its management agreement with Cushman because of the employees membership in, or activities by, these employees or their union representatives.

The timing of the termination of Computer's management agreement, when taken together with Computer's 8(a)(1) conduct, and the manner by which such termination took place, is virtually conclusive proof that such termination was discriminatorily motivated. Thus, the termination of the agreement took place 5 days after Computer had won the above-described NLRB election. His total employee compliment is nonunion, and by winning the election continued to be nonunion. By terminating the management agreement, Computer would effectively remove all union presence from its Islandia facility. Moreover, the termination of the management agreement was in violation of the terms of the agreement. The terms of the agreement provided that at least a 30-day-notice in writing was required. on March 31, Computer delivered a written notice informing Cushman that its services were terminated immediately. No reason was stated for such termination.

Based on Computer's knowledge of union activity, the 8(a)(1) activity, Computer's admissions, and the timing of the termination of the management agreement, I conclude that the General Counsel has established a very solid prima facie case.

Computer Manager Pozanski testified that it was always Computer's intention that the subcontract with Cushman would not be a long-term relationship, that it was always Computer's intention to eventually do the engineering work performed by Cushman on an ''in house'' basis. Pozanski testified that this was the reason for the initial term of the agreement of 18 months, and month to month thereafter.

Pozanski also testified that sometime, during the latter part of 1992, he first noticed on various invoice notices, what he believed to be excessive overtime costs, which started him

thinking about terminating the management agreement. However, such alleged costs were never brought to the attention of Cushman.

Pozanski also testified that he was concerned about health insurance contributions being possibly misapplied. This also was never brought to the attention of Cushman.

Yet, notwithstanding Pozanski's alleged dissatisfaction with Cushman, he did not raise any of these issues with Bzezinski when they met on January 14, 1993, for the purpose of Bzezinski presenting Cushman's proposals for a successor management agreement. Such proposals included higher fees for Cushman's services. In fact Pozanski testified that ''that it was a good meeting.''

I conclude that the economic considerations raised by Pozanski above, even if credited, utterly fail to justify why it was necessary to terminate the management agreement without any notice, in violation of the specific terms of the agreement. Pozanski testified that Computer failed to give any notice because they did not want a ''lame duck'' situation. But that is exactly what they had specifically contracted for when they agreed to the notice of termination provisions in their agreement. Neither Cushman management nor their employees had engaged in any conduct that would reasonably lead Computer to believe that given the 30-day notice provided for in their agreement, they would not have performed their jobs in a competent manner. I conclude that Computer failed to give Cushman the contracted-for notice because following the March 26 election, Computer was free of union organization of its employees, and wanted to remove the Union's presence from the Islandia facility entirely, to avoid any subsequent union organization at this facility.

Based on all the credible evidence, I conclude that Computer has utterly and completely failed to meet its *Wright Line* burden. I further conclude that the motivating reason for the termination of the management agreement immediately after Computer had won the March 26, 1993 election was to rid itself of any union presence at the Islandia facility and put an end to further union organization. I therefore conclude that the termination of the management agreement which directly resulted in the termination of the nine Cushman operating engineers, was discriminatorily motivated and such action constitutes a violation of Section 8(a)(1) and (3) of the Act. I also conclude that such violation and the independent 8(a)(1) violations, set forth above have the effect of discouraging union activity by employees employed by both Cushman and Computer.

Counsel contends that an 8(a)(5) violation is established against Computer on the basis of recognition extended to the Union by Benz and subsequent bargaining which took place. This contention is based on the testimony of Ahern. I have concluded that Ahern is a totally incredible witness who fabricated his testimony. In short, I have concluded factually that neither Benz, nor any other Computer employee, recognized the Union as the collective-bargaining representative of the operating engineers on the Cushman payroll, and that there was never any bargaining sessions held in this connection. Accordingly, I conclude that Computer did not violate Section 8(a)(5), as alleged.

The General Counsel contends as to Cushman that from the commencement of the management agreement between Computer and Cushman in September 1991, up through February 1993, negotiations for a collective-bargaining agreement progressed smoothly. It was agreed by the parties that their EAB contract would be followed, and that the terms and conditions of the EAB contract would be applied to the Computer Islandia facility. The credible facts support the General Counsel's contention up to this point.

The General Counsel contends that Ahern called Bzezinski in early March 1993 about the proposed contract and Bzezinski allegedly stated that they had a problem because of the Union's attempt to organize the Computer employees and asked the Union why they did this. The General Counsel further contends that after Computer terminated the management agreement Ahern called Bzezinski to find out what happened. Bzezinski allegedly stated that everything was going well until the Union filed the representation petition on January 14, 1993, concerning the facilities' employees and there was no way now to get an agreement. The General Counsel contends that Bzezinski's statements together with Computer's unlawful conduct demonstrate bad-faith bargaining. As set forth above, I discredit Ahern's testimony as to these alleged conversations.

I credit Bzezinski's testimony that he had agreed with the Union's proposal that the terms of the EAB agreement become the terms of the Cushman agreement at the Computer facility. Bzezinski credibly testified that the Union demand that was holding up the execution of a collective-bargaining agreement was Ahern's insistence on an ''assignment clause.'' I conclude that the Union wanted to be assured that the engineering work would remain union work whether the Cushman agreement with Computer continued, or Computer decided to do it ''in house,'' or another company replaced Cushman, and insisted on inclusion of such management-rights clause, a nonmandatory subject of bargaining, as a condition for executing the collective-bargaining agreement. Accordingly, I conclude that Cushman did not violate Section 8(a)(5) of the Act, as alleged.

CONCLUSIONS OF LAW

1. Computer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Cushman is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. The Union is a labor organization within the meaning of Section 2(5) of the Act.

4. Computer violated Section 8(a)(1) of the Act by unlawfully interrogating the employees employed by Cushman, with whom it had a subcontractual relationship, concerning their membership in, or activities on behalf of the Union.

5. Computer violated Section 8(a)(1) of the Act by threatening the employees employed by Cushman with the termination of the subcontract agreement between Computer and Cushman, which would effectively result in their discharge, and with other unspecified reprisals, because of their membership in, or activities on behalf of the Union.

6. Computer violated Section 8(a)(1) of the Act by promising the employees employed by Cushman that they would receive schooling, including computer training, and other unspecified benefits, if they would discontinue their membership in, or cease their activities on behalf of the Union.

7. Computer violated Section 8(a)(1) of the Act by warning the employees that Computer would never recognize, or bargain with the Union and that Union membership or activity on behalf of the Union was futile.

8. Computer violated Section 8(a)(1) and (3) of the Act by terminating its subcontract with Cushman because of Cushman's employees membership in, or activities on behalf of the Union.

REMEDY

I conclude that the independent 8(a)(1) violations and the 8(a)(3) violations described above, restrained and coerced the employees of Cushman and Computer. Therefore the Order and notice reflect such restraint and coercion.

Since I have found that Computer discriminatorily terminated its subcontract with Cushman because Cushman's employees were members of, or engaged in activities on behalf of the Union, which termination resulted in the discharge of Cushman's employees, I shall recommend that Computer be ordered to offer unconditionally a reinstatement of its subcontract with Cushman and request in writing that Cushman offer employment to those employees employed by Cushman on March 31, 1993, and work at Computer's Islandia facility.

I shall also recommend that Computer make whole the nine employees working for Cushman at Computer's Islandia facility on March 31, 1993, for any loss of earnings or other benefits from the date of the termination of the Cushman subcontract and the resulting discharge of the Cushman employees until the date that Computer makes an unconditional offer in writing to Cushman to resume the subcontract and requests that Cushman offer employment to the employees described above.

Backpay shall be computed as described in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as described in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I make the following recommended[2]

ORDER

The Respondent, Computer Associates International, Inc., Islandia, New York, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Interrogating its employees, the employees employed by Cushman & Wakefield of Long Island, or any other employer with whom the Respondent has a subcontractual relationship, concerning their membership in, or activities on behalf of Local 30, International Union of Operating Engineers, AFL–CIO or any other labor organization.

(b) Threatening its employees with discharge, or threatening the employees of Cushman, or any other employer with whom the Respondent has a subcontract, with the termination of such subcontract, because of their membership in, or activities on behalf of the Union, or any other labor organization.

(c) Promising its employees, the employees employed by Cushman, or any other employer with whom it has a subcontract, improvements in wages, hours, or other conditions of employment, because of their membership in, or activities on behalf of the Union, or any other labor organization.

(d) Warning its employees, the employees of Cushman, or any other employer with whom it has a subcontract that it would never recognize or bargain with the Union, or any other labor organization, and that membership in, or activity on behalf of the Union or any other labor organization was futile.

(e) Discharging its employees, or terminating its subcontract with Cushman, or any other employer with whom it has a subcontract because of its employees, the employees employed by Cushman, or any other employer with whom it has a subcontract, membership in, or activities on behalf of the Union or any other labor organization.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer to Cushman in writing, a request to reinstate the subcontract in existence on March 1993, and request as a crew to be reassigned to the Islandia facility those nine employees who were effectively discharged as a result of the cancellation of the above subcontract on March 31, 1993.

(b) Make whole the nine employees employed by Cushman, and working at the Islandia facility as of March 31, 1993, for any loss of earnings suffered as a result of the discriminatory termination of the Cushman subcontract in a manner set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its Islandia and Uniondale, New York facilities copies of the attached notice marked ''Appendix.''[3] Copies of the notice, on forms provided by the Regional Director for Region 29 after being signed by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees, are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National labor Relations Board has found that we violated the National labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT interrogate our employees, the employees employed by Cushman & Wakefield of Long Island, or any other employer with whom we have a subcontractual relationship, concerning their membership in, or activities on be-

half of Local 30, International Union of Operating Engineers, AFL–CIO, or any other labor organization.

WE WILL NOT threaten our employees with discharge, or threaten the employees of Cushman, or any other employer with whom we have a subcontract, with the termination of such subcontract, because of their membership in, or activities on behalf of the Union, or any other labor organization.

WE WILL NOT promise our employees, the employees employed by Cushman, or any other employer with whom we have a subcontract, improvements in wages, hours, or other conditions of employment, because of their membership in, or activities on behalf of the Union, or any other labor organization.

WE WILL NOT warn our employees, the employees of Cushman, or any other employer with whom we have a subcontract that we would never recognize or bargain with the Union, or any other labor organization, and that membership in, or activity on behalf of the Union, or any other labor organization was futile.

WE WILL NOT discharge our employees, or terminate our subcontract with Cushman, or any other employer with whom we have a subcontract because of our employees, the employees employed by Cushman, or any other employer with whom it has a subcontract, membership in, or activities on behalf of the Union, or any other labor organization.

WE WILL offer to Cushman in writing, a request to reinstate the subcontract in existence on March 1993, and request as a crew to be reassigned to the Islandia facility those nine employees who were effectively discharged as a result of the cancellation of the above subcontract on March 31, 1993.

WE WILL make whole the nine employees employed by Cushman, and working at the Islandia facility as of March 31, 1993, for any loss of earnings suffered as a result of the discriminatory termination of the Cushman subcontract in the manner set forth in the remedy section of this decision.

COMPUTER ASSOCIATES INTERNATIONAL, INC.